

ONTARIO LABOUR RELATIONS BOARD

Between:

Mechanical Contractors Association
Niagara,

(Applicant),

- and -

Sheet Metal Workers International
Association Local Union 537
Peninsula Branch,

(Respondent),

- and -

Hamilton and District Sheet Metal
Contractors Inc.,

(Intervener).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members
E. Boyer and F. W. Murray.

APPEARANCES: B. W. Binning, I.R.T. Sawle and William
Charles McKay appearing for the applicant; James Fletcher
appearing for the respondent; George Moller appearing for
the intervener; and Henry Janzen appearing for Janzen
Plumbing & Heating Ltd.

DECISION OF THE BOARD:

1. This is an application for accreditation, construction industry, wherein the applicant seeks to be accredited as the bargaining agent for certain employers who have a bargaining relationship with the respondent. The respondent is a party to a collective agreement with the applicant which was effective from May 1, 1973, until April 30, 1975, with provisions for a continuance in operation subject to notice. Having regard to the material before it, the Board is satisfied that more than one employer who is affected by this application is bound by this collective agreement. Accordingly, the Board finds that it has jurisdiction to entertain this application under section 113 of The Labour Relations Act.

2. The applicant is an unincorporated association. In support of its application the applicant filed a copy of its constitution. Having regard to the material before

it and the representations of the parties, the Board finds that the applicant is an employers' organization within the meaning of section 106(d) of The Labour Relations Act and is satisfied that the applicant is a properly constituted organization for the purposes of section 115(3) of The Labour Relations Act.

3. The applicant also filed in support of its application fifteen documents entitled "Employer Authorization". These documents appoint the applicant to represent the employer as its bargaining agent with the respondent and they further appoint the applicant as agent and representative to make an application for accreditation under The Labour Relations Act. The applicant also filed in support of these documents a duly completed Form 62, Declaration Concerning Representation Documents, Application for Accreditation, Construction Industry. The Board is satisfied that the evidence of representation meets the requirements set out in section 96 of the Board's Rules of Procedure and the Board is further satisfied that the individual employers on whose behalf the applicant has submitted evidence of representation have vested appropriate authority in the applicant to enable it to discharge the responsibilities of an accredited bargaining agent.

4. The collective agreement referred to in paragraph one applies to and is effective within portions of the Regional Municipality of Niagara and the County of Haldimand. The applicant and the respondent agree that this is the appropriate geographic area for accreditation in this application. The applicant and the respondent have also agreed that pursuant to this collective agreement employees have been employed in the following sectors of the construction industry: the industrial, commercial and institutional sector and the residential sector. Janzen Plumbing & Heating Ltd. ("Janzen") argued that the residential sector should not be included in the ^{unit of employers} bargaining unit because of the inability of the applicant to represent employers in the residential sector. Having regard to the representations before it, the Board finds that the collective agreement includes the residential sector. There is nothing before the Board to indicate that the applicant is unable to represent employers in the residential sector. The basis of Janzen's opposition to the inclusion of the residential sector is an apprehension of competition from employers whose employees are not represented by the trade union. In our view, the apprehensions of Janzen are best dealt with in the context of collective bargaining. In all of the circumstances of this application the Board finds that all employers of journeymen sheet metal workers and registered apprentices for whom the respondent has bargaining rights in the Regional Municipality of Niagara and the County of Haldimand lying east of a line formed by Haldimand

County Roads 36 and 9 north to 17 along 17 to the junction with 15 along 15 to Regional Road 63 to and along Regional Road 16 as it extends from its intersection with Regional Road 63 to the Town of Smithville and Regional Road 14 as it extends to Smithville to Lake Ontario in the industrial, commercial and institutional sector and the residential sector of the construction industry, constitute a unit of employers appropriate for collective bargaining.

5. Notice of this application was given to 30 employers in accordance with the Board's Rules of Procedure.

6. Nine employers failed to file returns. Having regard to the representations before it, the Board makes the following determination pursuant to section 115 of The Labour Relations Act:

- No. 7 Howard Sheet Metal and Air Conditioning Limited - Final Schedule "F"
- No. 8 J. W. Holleran - Final Schedule "E"
- No. 12 Metal Man - Final Schedule "F"
- No. 15 Nesbitt Plumbing & Heating Limited
- agreed to be removed from the
list of employers
- No. 21 Jack Sheldon Plumbing & Heating -
Final Schedule "E"
- No. 23 Gordon Wright Electric Ltd. -
Final Schedule "E"
- No. 24 Wm. Dennis Plumbing & Heating -
Final Schedule "F"
- No. 25 San-Mar Sheet Metal - Final Schedule "E"
- No. 28 Ed Groves Sheet Metal - Final Schedule "F"

7. Two employers filed replies and claimed that the respondent is not entitled to bargain on behalf of the employees of the employer affected by the application. Having regard to the representations before it, the Board makes the following determination pursuant to section 115 of The Labour Relations Act:

- No. 16 John Peart & Son Limited - Final
Schedule "F"
- No. 27 Ed Christensen Roofing Limited -
Final Schedule "E"

8. On the basis of the foregoing and the filings by individual employers, the Board has prepared the following lists of employers. These employers listed on Final Schedule "E" are those who have indicated that they had employees affected by the application in the year preceding February 21, 1975, the date of the making of this application. Those on Final Schedule "F" have indicated that they have not had such employees.

Final Schedule "E"

Blenkhorn and Sawle Limited
Crescent Air Conditioning Ltd.
E. S. Fox Limited
F. N. Fulop Plumbing and Heating Ltd.
J. W. Holleran
Janzen Plumbing & Heating Ltd.
Lincoln Mechanical Contractors and/or
Lincoln Plumbing & Heating Ltd.
Nesbitt Metal Fabricators Limited
A. F. Pullen
W. B. Pyle Ltd.
Reliance Plumbing & Heating Co. Limited
Sheehan Plumbing & Heating Ltd.
Jack Sheldon Plumbing & Heating
Stanford Plumbing & Heating Co. Limited
Gordon Wright Electric Ltd.
San-Mar Sheet Metal
Brown Jarvis Roofing Co.
Ed Christensen Roofing Limited
Geo. Orth Ltd.
Rudy's Metal Works Limited

Final Schedule "F"

Danvi Mechanical Contractors Ltd.
Goodram Bros. Limited
Howard Sheet Metal and Air Conditioning Limited
Inrig Roofing & Sheet Metal Company Ltd.
Metal Man
Midland-Ross of Canada Limited
John Peart & Son Limited
Wm. Dennis Plumbing & Heating
Ed. Groves Sheet Metal

The Board finds that the 21 employers on Final Schedule "E" were those employers who had employees in the year immediately preceding the making of the application, and the number 21 is the number of employers to be ascertained by the Board under section 115(1)(a) of The Labour Relations Act.

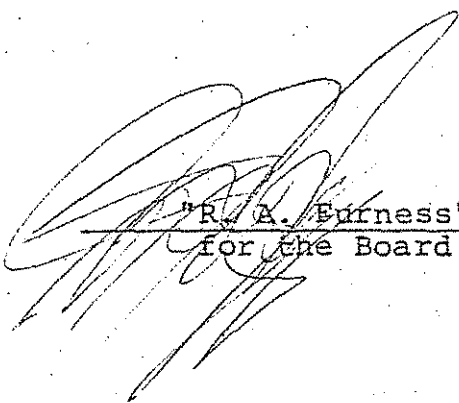
9. On the basis of all the evidence before it, the Board finds that on the date of the making of the application, the applicant represented 11 of the 21 employers on Final Schedule "E". The 11 employers is the number of employers to be ascertained by the Board under

section 115(1)(b) of The Labour Relations Act. Accordingly, the Board is satisfied that a majority of the employees in the unit of employers is represented by the applicant.

10. The Schedule "H" which accompanied the Form 68, Employer Filing, filed by the individual employers sets out the number of employees that the employer has at each job site with details of the location and the type of construction involved. By section 115(1)(c) of The Labour Relations Act, the payroll period immediately preceding the making of the application is the relevant weekly payroll period for determining the number of employees affected by the application. On the basis of the evidence before it, the Board finds that there were 108 employees affected by this application during the payroll period immediately preceding February 21, 1975. The 108 employees is the number of employees to be ascertained by the Board under section 115(1)(c) of The Labour Relations Act.

11. The Board finds that the 11 employers represented by the applicant employed 83 of these 108 employees. The Board is therefore satisfied that the majority of the employers represented by the applicant employed a majority of the employees affected by this application as ascertained in accordance with the provisions of section 115(1)(c) of The Labour Relations Act.

12. Having regard to all of the above findings a Certificate of Accreditation will issue to the applicant for the unit of employers found to be an appropriate unit of employers in paragraph four herein, and in accordance with the provisions of section 115(2) of The Labour Relations Act for such other employers for whose employees the respondent may after February 21, 1975, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.



"R. A. Furness"
for the Board

May 12, 1977.